

Federal Communications Commission

DA 03-399

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
St. Joseph University Heights)	File No. SLD-SJUH121399
Buffalo, New York)	
Federal-State Joint Board on)	CC Docket No. 96-45 ✓
Universal Service)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: February 10, 2003**Released: February 11, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. This Order dismisses the Request for Review filed by St. Joseph University Heights (St. Joseph), Buffalo, New York.¹ St. Joseph seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) on March 23, 2001.² The Commission received St. Joseph's Request for Review on October 28, 2002.³

2. For requests seeking review of decisions issued before August 13, 2001, under section 54.720(b) of the Commission's rules, any such appeal must be filed with the Commission or SLD within 30 days of the issuance of the decision that the party seeks to have reviewed.⁴ Documents are considered to be filed with the Commission only upon receipt.⁵ The 30-day deadline contained in section 54.720(b) of the Commission's rules applies to all such requests for

¹ Letter from Genevieve Efthemis, St. Joseph University Heights, to Federal Communications Commission, filed October 28, 2002 (Request for Review).

² See Request for Review; Letter ~~from~~ the School and Libraries Division, Universal Service Administrative Company, to Genevieve Efthemis, St. Joseph University Heights, dated ~~March~~ 23, 2001 (Rejection Letter). Section 54.719(c) of the Commission's rules provides that any person aggrieved ~~by~~ an action taken by a division of the Administrator may seek review from ~~the~~ Commission. 47 C.F.R. § 54.719(c).

³ See Request for Review.

⁴ 47 C.F.R. § 54.720(b).

⁵ 41 C.F.R. § 1.7.

review filed by a party affected by a decision issued by the Administrator.⁶ Because the St. Joseph's Request for Administrator Review was not filed within the requisite 30-day period, we affirm the Administrator's Decision on Appeal and deny the instant Request for Review.

3. To the extent that St. Joseph is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules, we deny that request as well.⁷ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.⁸ St. Joseph has not shown good cause for the untimely filing of its initial appeal. St. Joseph explains its appeal was not filed in a timely fashion because of poor clerical management.⁹

4. We conclude that St. Joseph has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁰ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits. The March 23, 2001 Rejection Letter clearly states that "your appeal must be ... RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) ... WITHIN 30 DAYS OF ISSUANCE OF THIS LETTER."¹¹

5. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Here, St. Joseph argues that it had poor clerical management. In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeals to SLD if it wishes its appeals to be considered on the merits.¹² An applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD decisions on its behalf. Thus, St. Joseph fails to present good cause as to

⁶ We note that, due to disruptions in the reliability of the mail service, the 30-day appeal period has been extended by an additional 30 days for requests seeking review of decisions issued on or after August 13, 2001. *See Implementation of Interim Filing Procedures for Filings & Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 339 (rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings & Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. Dec. 28, 2001 and Jan. 4, 2002). Because the March 23, 2001 Rejection Letter was issued before August 13, 2001, the extended appeal period does not apply to St. Joseph.

⁷ See 47 C.F.R. § 54.720(b)

⁸ See 47 C.F.R. § 1.3.

⁹ Request for Review.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹¹ Rejection Letter.

¹² See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. rel. Nov. 24, 2000), para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").

why it could not timely file its appeal to SLD. We therefore find no basis for waiving the appeal filing deadline.

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's **rules**, 47 C.F.R. §§ 0.91, 0.291, **1.3**, and 54.722(a), that the Requests for Review filed on October 28, 2002, by St. Joseph University Heights, Buffalo, New York, as well as the request to waive the deadline for filing its appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Mark G. Seifert" with a stylized flourish at the end.

Mark G. Seifert

Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

